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IN THE
Supreme Court of the United States

OCTOBER TERM, 1957

Nos. 6 & 8

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.,
Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, ET AL., *Appellees.*

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *Appellants,*

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
COMMISSION, ET AL., *Appellees.*

Appeal From the United States District Court for the
District of Columbia

**BRIEF OF
ROCK ISLAND MOTOR TRANSIT COMPANY
INTERVENOR-APPELLEE**

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The briefs of appellants correctly set forth the citation of the case below, the jurisdiction of the court, and the statutory provisions involved in the appeal.

QUESTIONS PRESENTED

The questions presented may be stated as follows:

1. When, in a proceeding under Section 207(a) of the Interstate Commerce Act, the Commission finds that public convenience and necessity require motor carrier service in a particular area, does the fact that the applicant therefor is a railroad subsidiary preclude the Commission from issuing an appropriate certificate to such applicant?

2. Are the provisions of Section 5(2)(b) of the Interstate Commerce Act, relating to acquisition of a motor carrier by a railroad, to be construed as prohibiting railroad corporations, or their subsidiaries, from conducting motor carrier operations over public highways even though the public need therefor is clearly demonstrated by evidence?

3. Is the conclusion of the Commission that public convenience and necessity requires the continuation of the service rendered by Rock Island Motor Transit Company, Intervenor-Appellee, supported by substantial evidence?

Briefly stated, the position of Rock Island Motor Transit Company, Intervenor-Appellee, is that the foregoing questions have been fully answered by the decisions of this Court in *United States, et al. v. Rock Island Motor Transit*, 340 U.S. 419, 95 L. Ed., 391, 71 S. Ct. 382; in *Interstate Commerce Commission, et al. v. Parker*, 326 U.S. 60, 89 L. Ed., 2051; and in *United States, et al. v. Pierce Auto Freight Line*, 327 U.S. 515, 90 L. Ed., 821.

4. A further question presented in Number 8 is:

Does an association of labor executives, comprised of officers of various unions, some of which

represent employees of a railroad whose wholly owned subsidiary has applied for a certificate of public convenience and necessity authorizing motor carrier operations, have standing to challenge the legality of Commission action granting a certificate to such railroad subsidiary?

STATEMENT OF THE CASE

The statements of the case appearing in the briefs of counsel for appellants do not fully disclose the factual situation or background of the case. We therefore substitute the following brief outline of the previous history of the case, and the evidence before the Commission:

Rock Island Motor Transit Company is the successor in title and interest to White Line Motor Freight Company, one of the pioneer operators in the motor carrier field between Chicago, Ill. and Omaha, Nebr., and particularly between the Mississippi River points of Rock Island, Moline, East Moline, Ill., Davenport and Bettendorf, Ia., and the Missouri River points of Council Bluffs, Ia. and Omaha, Nebr. White Line commenced motor carrier operations in early 1930 between the Quad-Cities (Rock Island, Moline and East Moline, Ill., and Davenport, Ia.) and Des Moines, Ia. via U.S. Highway 6. A few months later, its operations were extended from Des Moines to Omaha, Nebr. over the same highway; its service was extended to Cedar Rapids, from Iowa City over U.S. Highway 218, and to Muscatine, about 27 miles west of Davenport over Iowa Highway 38. In the early 1930's it extended its motor carrier service east to Chicago via Highways 92 and 34, and later entered into an interchange arrangement with Keeshin Motor

Express between Chicago and East Moline, where trailers were interchanged and White Line performed the service between East Moline and Omaha, Nebr. (See *Rock Island Motor Transit Company—Purchase—White Line M.F., 5 M.C.C. 451*)

On October 13, 1937, Motor Transit and White Line jointly applied to the Commission for its approval of the acquisition by Motor Transit of all physical assets and operating authority of White Line. A recommended report and order of an examiner of the Commission approved the transaction but suggested that the Commission impose conditions restricting the transportation to be performed to shipments moving on railroad billing and at rail rates, and that Motor Transit's operating authority be subject to such further limitations and restrictions as the Commission might find necessary to impose "to insure that the service shall be auxiliary or supplementary to the train service of the Chicago, Rock Island and Pacific Railway Company, and shall not unduly restrain competition".

Exceptions were filed and fully argued before Division 5 of the Commission, in which Motor Transit urged the desirability of performance of motor carrier service by it, on motor carrier billing and at motor carrier rates. Motor Transit pointed out that the conditions proposed by the examiner would deprive some of the communities previously served by White Line of the benefits of motor carrier service. On April 1, 1938, the Commission, Division 5, entered its order approving the acquisition. It expressly found that the acquisition would promote the public interest, would enable the railroad to utilize service by motor vehicle to public advantage in its operations, and would not unduly restrain competition. The restriction confining

Motor Transit to transportation of shipments on rail billing at rail rates was eliminated, but the reservation of authority to impose future restrictions to insure that the service shall be auxiliary or supplemental to the train service of the Chicago, Rock Island and Pacific Railway Company was retained. A certificate containing that condition and restricting Motor Transit's operations to points which were stations on the line of the Rock Island Railroad was issued December 3, 1941.

Coincident with the acquisition of White Line's interstate operating authority, Motor Transit also acquired its intrastate certificates of public convenience and necessity which authorized motor carrier service between Iowa points via the same routes. Motor Transit took over the operation immediately after April 5, 1938. It purchased new equipment, acquired certain other routes connecting with the former White Line operation, and improved the White Line service by inaugurating a number of "peddler" runs, by which is meant distribution of numerous small shipments by a truck which starts from a larger terminal and makes deliveries at smaller points, either returning to its origin point, or continuing to a destination on the same route. In these peddler runs, Motor Transit handled interstate motor billed freight, intrastate motor billed freight and both inter and intrastate railroad billed shipments, which were turned over to it by the railroad.

J. H. Fredrickson and Son, of Harlan, Iowa, held interstate and intrastate certificates authorizing operations as a common carrier between Avoca, Harlan, Council Bluffs, Oakland and Atlantic, serving a number of communities which were stations on the rail line of the Rock Island Railroad, not located on U.S.

Highway 6. On November 28, 1944, in *Rock Island Motor Transit Company—Purchase—Fredrickson*, 39 M.C.C. 824, the Commission, Division 4, approved Motor Transit's acquisition of the Fredrickson certificate, but no certificate was immediately issued to Motor Transit. On February 5, 1945, the Commission ordered both the Fredrickson and the White Line cases reopened for further consideration to determine what, if any, restrictions should be imposed in order to insure that the service rendered by Motor Transit would be auxiliary and supplemental to the rail service of the railroad.

Pursuant to the reopening, the Commission, in *Rock Island Motor Transit Company—Purchase—White Line M. Frt.*, 40 M.C.C. 457, on March 4, 1946 without a hearing, entered an order directing that both the White Line and Fredrickson certificates be restricted to handling shipments on rail billing and at rail rates and with other conditions designed to insure that the service be auxiliary and supplemental to the rail service of the railroad. Motor Transit filed a petition for reconsideration of this order, in which it suggested that a hearing be held. On June 9, 1947, the Commission again reopened the two acquisition cases for further hearing. A hearing was scheduled but Motor Transit declined to introduce evidence and thereafter on April 11, 1949, in 55 M.C.C. 567, the Commission issued its order imposing the same restrictions as were embodied in the order of March 4, 1946.

Motor Transit instituted a suit in the United States District Court for the Northern District of Illinois at Chicago. A three judge court, on November 29, 1949, set aside the Commission's order of April 11, 1949, and enjoined its enforcement. *Rock Island Motor Transit*

Company v. United States, et al., 90 F. Supp. 516. The United States and the Commission appealed from the judgment of the District Court, to this Court, which on February 26, 1951, in *United States et al. v. Rock Island Motor Transit Company*, 340 U.S. 419, 71 S. Ct. 382, 95 L. Ed. 391, by a vote of five justices to four, reversed the decision of the three judge court. This Court held that the Commission, under the reservation contained in the White Line certificate, had the power to impose the restrictions, and as to the Fredrickson case, ruled that since no certificate, covering the Fredrickson routes had been issued to Motor Transit, the Commission still had control of the proceeding. Upon the issuance of the mandate of the Supreme Court of the United States, Motor Transit's action in the Northern Illinois District Court was dismissed, and judgment rendered against it for costs of the action.

On August 30, 1951, upon a showing of lack of service to the area covered by the White Line and Fredrickson certificates, supported by affidavits of shippers and others, the Commission granted Motor Transit temporary authority for not to exceed 180 days to render motor carrier service to the affected points, restricted to a maximum of two thousand pounds for any one shipment. A hearing was held before an examiner of the Commission in September, 1951, after which the maximum restriction was raised to five thousand pounds per shipment.

On October 26, 1951, Motor Transit filed its application under Section 207 for permanent authority to perform motor carrier service over the White Line and Fredrickson routes. This was later amended to apply for removal of the maximum weight and keypoint limitations upon applicant's service. Hearings upon

this application extended over fourteen full days, March 18 through April 2, 1952 and May 20 to 22 inclusive. On April 21, 1953, the hearing examiner filed a recommended report and order which appears at R. 1. Exceptions were filed by a number of motor carriers, by American Trucking Associations, Inc. and oral arguments were had before the entire Commission on March 8, 1954. The Commission filed its report and order on November 22, 1954, 63 M.C.C. 91, R. 93. Appellants' petition for reconsideration was denied by Commission order July 14, 1955.

Appellants instituted an action in the United States District Court for the District of Columbia on July 20, 1955. The case was heard upon the record made before the Commission by a three judge court, Circuit Judge Prettyman presiding, on December 15, 1955. The unanimous opinion of the three judge court sustaining the action of the Commission was filed January 11, 1956 and judgment dismissing the appellant's complaint was entered January 27, 1956. (R. 195). Notices of appeal by appellants in both 6 and 8 were filed within the required time. This Court noted probable jurisdiction on October 8, 1956. (R. 204).

At the hearing, approximately 180 witnesses were heard. Some 136 of these witnesses were shippers and receivers of freight located in practically every point on the White Line and Fredrickson routes, and other points such as Minneapolis and St. Paul, Minnesota, Chicago, Illinois, Burlington, Ottumwa, Oskaloosa and Clinton, Iowa and Kansas City and St. Joseph, Missouri. The evidence given by these witnesses will be referred to in greater detail in our discussion of the sufficiency of the evidence to support the Commission's findings.

At the conclusion of applicant's evidence before the examiner, the protesting motor carriers, appellants here, requested a postponement of approximately six weeks to enable them to prepare to meet applicant's evidence. The examiner thereupon adjourned the hearing from April 2, 1952 until May 20, 1952. The appellants introduced no shipper witnesses to controvert the showing made by applicant. The only witnesses called, aside from certain individuals performing local pickup and delivery service for other motor carriers at points like Iowa City and Atlantic, were C. A. Gracey, Vice President of Iowa-Nebraska Transportation Company, E. W. Harlan, President and General Manager, Bruce Motor Freight, Inc., which operates between St. Paul and Minneapolis, Des Moines, Kansas City and St. Louis with no service whatever to intermediate points, including such cities as Ottumwa, Ia., population 33,000, Keokuk, Ia., population approximately 20,000, and Missouri points; Joe Bos, of Bos Truck Lines, Inc., Marshalltown, Iowa, and A. W. Hobbs, Vice President, Des Moines Transportation Company. During the cross-examination of the witness Gracey, request was made that freight bills and delivery receipts of Iowa-Nebraska Transportation Company, showing shipments originating and handled at Omaha, Nebr., Des Moines, Ia. and Chicago, Ill., destined to points involved in the proceeding, be produced for examination. The examiner denied the request but advised counsel for all parties that the failure to produce such records was a circumstance which might be taken into account in determining the weight and credit to be given the testimony of the witness as to the time when peddler service was inaugurated and the extent of it. (R. 1571-1573).

At the time of the hearing before the Commission, Motor Transit was operating peddler runs on regular daily schedules (at least five days per week) over portions of the White Line route as follows:

A. Between Davenport and Atalissa, Iowa and return, serving the intermediate points of Walcott, Stockton, Durant, Sunbury, Wilton Junction, Moscow and Atalissa. This run leaves the Davenport, Ia. terminal at 7:00 a.m., delivers and picks up freight shipments at those points. (R. 362-363)

B. Between Iowa City and Victor, Ia. and return, serving the intermediate points of Tiffin, Oxford, Homestead, South Amana, Marengo and Victor. (R. 566-568)

C. Between Iowa City and Wellman, Ia. and return, serving the intermediate point of Kalona. (R. 566-569)

D. Between Cedar Rapids and Ottumwa, Ia. via U. S. Highway 218 and Iowa City. (R. 570-571)

E. Between Des Moines and Colfax, Ia. and return, serving the intermediate points of Altoona and Mitchellville. (R. 1341)

F. Between Des Moines and Newton, where an exchange of trailers is made, and the tractor picks up a loaded semi trailer unit, and proceeds east to Chicago, making pickups in Grinnell and Iowa City. (R. 1342-1344).

G. Between Des Moines, Kellogg and Grinnell. (R. 1343)

H. Between Des Moines, Brooklyn, Marengo, Iowa City, Nichols and Muscatine. (R. 1344-1345)

I. Omaha, Nebr. to Lewis, Treynor, Carson, Oakland, Hancock, Avoca and return via Iowa Highway 64, serving in addition to the points specified, Shelby, Neola, Minden, Underwood, and Weston. (R. 1331)

J. Between Des Moines and Audubon, Ia. and return, serving Atlantic, Brayton, Exira, Hamlin and Audubon. (R. 1347)

K. Between Des Moines and Anita, Ia., serving the intermediate points of Dexter, Stuart, Menlo, Casey, Adair, Anita and return to Des Moines. (R. 1347)

These runs all handled rail billed freight, and interstate and intrastate motor carrier billed freight in the same vehicle. The proportion of rail billed freight varied from ten to twenty-five per cent, and the proportion of inter and intrastate motor billed freight varied according to the location of the run. At the hearing, the position of Rock Island Motor Transit Company, Intervenor-Appellee, was supported by numerous representatives of motor carriers who have interlined shipments with Motor Transit at such points as Chicago, Rock Island and Moline, Ill., Cedar Rapids and Davenport, Ia.

These witnesses included:

George V. Bishop, traffic representative for Clipper Transit Company, Manitowoc, Wisc., who testified that his company served eastern Wisconsin points and Chicago; that difficulty had been experienced in securing carriers at Chicago who would handle shipments to destinations in Iowa, such as Oxford, Wilton Junction, Walcott, Lone Tree and Wellman, but that Motor Transit had handled all such shipments. (R. 290-293)

Henry H. Weixler, Vice President, Atkins Transfer Company, Louisville, Ky., who testified his company

served the area between Nashville, Tenn. and Chicago, and that he had experienced much difficulty in finding carriers to handle shipments to interior Iowa points, but that Motor Transit had handled everything given to them. He referred particularly to destinations such as Wilton Junction, Kalona, Wellman, West Liberty, Grinnell, Audubon, Griswold and Harlan (R. 1019), also to shipments of tires destined from Birmingham, Ala. to Rock Island, Ill. via Chicago.

Keith Cecil, General Manager, Central Transfer Company, Brimfield, Ill. (a suburb of Peoria), testified that his company interlined shipments originating at Illinois points with Motor Transit at Davenport, destined to interior Iowa points; that prior to September 1951, his company interlined numerous shipments in excess of five thousand pounds with Motor Transit; that during the period of time that Motor Transit was restricted to two thousand pound shipments, his company had difficulty in securing interline carriers to serve Iowa destinations, and that some companies had refused to handle them from Davenport to destination. (R. 418, 423)

M. J. Riley, Vice President and Traffic Manager for Dohph Transfer Company, which operates between Mississippi River points in Iowa, as far south as St. Louis, Mo. and east to Indianapolis, Ind. and Chicago, testified that no motor carrier, other than Motor Transit, rendered a local peddler service to points in Iowa between the Davenport-Rock Island area and Omaha, Nebr.; that while truck loads to Des Moines and larger points could be interlined with other carriers, except at one or two points, his company could get no interline service to points along U. S. Highway 6. (R. 342-347)

V. G. Grice, General Manager, H. & W. Motor Express, which operates between Chicago, Waterloo and Cedar Rapids, Ia. via Dubuque, and to Clinton and the Quad Cities, testified that while his company holds authority to serve every point on U. S. Highway 6 between Davenport and Des Moines, the volume available was usually insufficient to conduct the operation at a profit; that the peddler operations of the carriers generally serving the Iowa territory have depreciated and that, as to many destinations, Rock Island Motor Transit has been the only carrier which would accept interline shipments from his company. (R. 298) This witness testified that interstate traffic with no intrastate certificate would not sustain local peddler service to small intermediate points. (R. 299)

William J. Creagan, General Manager, Knox Motor Service, of Rockford, Ill., which serves the Quad Cities area, including Davenport and Bettendorf, Ia., testified that Rock Island Motor Transit was the only carrier that would consistently take and handle shipments of a few hundred pounds destined to interior Iowa points on or adjacent to U. S. Highway 6. His traffic consists of repair parts for implements shipped by J. I. Case Company, medicines from Rawleigh Company at Freeport, Ill., hardware from Sterling, Ill., and Milwaukee, Wisc., and small tools, and repair parts for implements out of Rockford, Ill. (R. 701-704)

SUMMARY OF ARGUMENT

Section 5 (2)(b) applies only to acquisition cases. Section 207 requires the issuance of a certificate of public convenience and necessity whenever the Commission finds that public convenience and necessity require and that applicant is fit, willing and able to

perform the service. The mere fact that applicant for such certificate is affiliated with a railroad does not make him ineligible to secure a certificate of public convenience and necessity.

The Interstate Commerce Commission has consistently followed the policy of permitting railroad carriers and their affiliates to render motor carrier service whenever the circumstances demonstrate a real need for such service. The decision of the Commission in the case at bar involves no departure from established principles and practices.

The Commission's finding that public convenience and necessity require service by applicant, both to the smaller communities and between the larger centers of population, is a matter entrusted to the discretion of the Commission, and the evidence amply supports the Commission's conclusion. The operations of appellee Rock Island Motor Transit during the years 1938 to 1951 have not tended to create a monopoly nor to lessen competition and there is no prospect that future operations of Motor Transit, under the certificate issued by the Commission, will adversely affect independent motor carriers.

ARGUMENT

Neither the National Transportation Policy embodied in the preamble to the Interstate Commerce Act nor Section 5(2)(b) restrict the power of the Commission to issue certificates of public convenience and necessity when need therefor is shown, merely because the applicant is affiliated with a railroad.

Counsel for the Interstate Commerce Commission will, we believe, fully reply to the contention of Appellants that Congress, by the enactment of Section

5(2)(b) and by the statement found in the National Transportation Policy has forbidden railroads or their subsidiaries to enter the motor carrier field. We shall, therefore, refer to the matter only in the briefest possible manner.

First, we desire to point out that Section 5(2)(b) relates only to acquisitions of existing motor carriers. This provision was intended as a safeguard against the creation of a monopoly in the transportation field. Congress by Section 5(2)(b) has expressly authorized railroads to acquire motor carriers, if the requisite findings are made by the Commission. In other words, the contention of Appellants is that while 5(2)(b) expressly permits railroads to acquire motor carriers, still the section must be construed to prohibit such acquisitions. It is Appellants' contention that the statute must be construed as authorizing a railroad to acquire only the vehicles used by a motor carrier, and then use them in its operation as a railroad. The language of 5(2)(b) negatives any such Congressional intent.

Second, the language of Section 207 requires no construction. The section is plain and unambiguous. It expressly authorizes issuance of certificates of public convenience and necessity for motor carrier operation "to any qualified applicant", when the requisite findings are made by the Commission. The statute as written does not justify resort to extraneous matters to determine the legislative intent.

Third, nothing in the National Transportation Policy or in the provisions of Section 207 or 5(2)(b) indicate any Congressional purpose to prohibit railroads from operating motor carriers, as such. Section 5(2)(b)

indicates concern that no monopoly shall be created in the transportation field, by acquisition of motor carriers by railroads, or persons controlled by railroads. There is no intimation in the language of the Act that Congress was particularly interested in restricting the development of truck transportation by railroads, and certainly no language found in the Act supports the construction for which Appellants contend that railroads, after acquiring motor carriers, must cancel all motor carrier tariffs, and abandon motor carrier operations.

Fourth, this Court by its pronouncements in *Interstate Commerce Commission v. Parker*, 326 U.S. 60, 89 L. Ed. 2051, and in *United States, et al. v. Rock Island Motor Transit Company, et al.*, 340 U.S. 419, 95 L. Ed. 391, has clearly repudiated the construction for which Appellants' counsel contend.

The decision in the case at bar involves no departure from previous policies or practices of the Interstate Commerce Commission. The Commission has consistently recognized that railroad carriers or their affiliates under proper circumstances may be granted unrestricted motor carrier authority under Section 207, or may acquire and operate existing motor carriers under Section 5(2)(b).

Throughout their Brief, counsel for Appellants have attempted to create the impression that the decision of the Commission in the present case involves a radical departure from long established rules, and that the Commission has adopted a new policy of favoring railroad companies at the expense of the so called independent motor carriers. These statements are wholly without justification, and are in no manner supported by the prior opinions of the Commission.

First, the Commission's opinion specifically points out that its findings in the present case are "not to be construed as an abrogation of the policy established in" previous cases with respect to operation of motor carriers by railroad companies or their subsidiaries. (R. 116)

Second, an examination of the decisions of the Commission will demonstrate that the Commission has always followed a policy designed to secure for the public the benefits of efficient transportation service. Since the adoption of the Motor Carrier Act in 1935, the Interstate Commerce Commission has had frequent occasion to consider the operation of trucks and passenger busses by railroads, or railroad subsidiaries. The policy of the Commission has been to decide each case upon its particular facts with the needs of the communities for service as the controlling consideration. This policy of the Commission has found expression in cases in which rail carriers or their subsidiaries have sought to acquire existing motor carriers, and in which rail carriers have sought certificates of public convenience and necessity under Section 207. There are many outstanding instances in which the Commission has granted certificates authorizing unrestricted motor transportation by railroads. The following constitute only a partial list of such cases found in the Commission's reports.

Santa Fe Trail Stages, Inc.—Control—Central Ariz., 1 MCC 225.

St. Andrews Bay Transportation Co.—Extension, 3 MCC 711

Rock Island Motor Transit Co.—Extension—Wellman, Ia., 31 MCC 643.

Interstate Transit Lines—Extension—Verdon, Nebr., 10 MCC 665

Santa Fe Trail Stages, Inc.—Common Carrier Application, 21 MCC 725

Burlington Transportation Co.—Extension—Council Bluffs, Ia., 28 MCC 783

Texas & Pacific Motor Transport Co.—Extension—Point Blue, La., 47 MCC 425

Santa Fe Trail Transportation Co.—Extension—Joplin, Mo., 44 MCC 474

Burlington Truck Line, Inc.—Extension—Iowa, 48 MCC 516

Clinton, Davenport & Muscatine Ry. Co.—Extension, 24 MCC 250

Southern Pacific Co.—Control, Pac. Motor Trucking Co.—Purchase—Lowinell Trucking Co., 60 MCC 373

In *Rock Island Motor Transit Co.—Extension—Wellman, Iowa, 31 MCC 643*, Motor Transit applied for a certificate authorizing service between Iowa City, Kalona and Wellman, Iowa. The Record demonstrated that there was no existing motor carrier service in that territory. Division 5 found that public convenience and necessity required the service, but imposed a condition restricting the service to be performed to movement of shipments on rail billing and at rail rates. The entire Commission removed this restriction. A similar situation existed in *Clinton, Davenport and Muscatine Ry. Co.—Extension, 24 MCC 250*. Numerous railroads, large and small, have been granted unrestricted motor carrier authority, both in the passenger and freight transportation fields. Burlington Truck Lines, a subsidiary of Chicago, Burlington and Quincy Railroad Company, is an extensive midwest motor carrier, and has operated with no restrictions between Chicago and Omaha, and intermediate points, for approximately 20 years. In addition it has other extensive operations in the States of Illinois, Missouri, Nebraska,

Iowa, and Colorado, upon which no limitation of the character here involved has ever been applied.

An examination of the cited decisions of the Commission and others will demonstrate that the Commission's policy has been based upon a desire to insure adequate and proper service to the public, and that the identity of the particular carrier furnishing the service has not been given controlling weight.

The finding of the Commission that public convenience and necessity require service by applicant both to the smaller communities and between the major points is amply supported by the evidence, and is conclusive upon the Courts.

Railway Labor Executives Association, et al., appellants in Cause No. 8, do not attack the sufficiency of the evidence to support the Commission's conclusion that public convenience and necessity require continuation of service by applicant, Motor Transit Company. Before the Commission and the Court below, American Trucking Associations, Inc., and individual motor carriers, appellants in No. 6, challenged the sufficiency of the evidence to support the Commission's finding of public convenience and necessity. Apparently these appellants have abandoned that position, for, at page 52 of their Brief, they now concede:

"that there was sufficient evidence of record to enable the District Court to sustain the Commission's order insofar as it authorized a bona fide auxiliary and supplemental service to be rendered to and from such relatively minor points as Brooklyn, Colfax, Marengo, Newton, Oxford, Victor, Walcott and Wilton Junction."

Appellants, in No. 6, still urge, however, that the Record is devoid of testimony showing any public need

for motor carrier service between "major points" involved in this Record.

These so-called "major points" are all cities and towns having a population according to the 1950 census of more than 6,000. They include Chicago, Moline, East Moline, and Rock Island, Ill. and Davenport, Iowa City, Cedar Rapids, Grinnell, Newton, Des Moines, Atlantic, Council Bluffs, Iowa, and Omaha, Nebr.

Counsel for appellants entirely overlook the fact that the undisputed Record shows that there are eleven towns between Des Moines and Davenport which are served by no other motor carrier except applicant. These points are Walcott, Stockton, Durant, Wilton, Atalissa, Tiffin, Coralville, Oxford, Homestead, South Amana and Altoona. They overlook the undisputed fact that in addition to these towns there are points such as West Liberty, Victor, Malcom, Ladora, Marengo, Kellogg, as well as off route points like Kalona and Wellman, which have either no motor carrier service whatever, except that of applicant, or no service rendered on a regular schedule. They overlook the fact that between Des Moines and Omaha the Record likewise shows that no carrier renders any regular scheduled service to points such as Lewis and Griswold located off highway No. 6 and points such as Exira and Brayton, which are between Audubon and Atlantic, Iowa.

Walcott is located approximately twelve miles west of Davenport and one mile off U. S. Highway 6. Witnesses from this community testified that applicant's service was the only available motor carrier service, and this was in no manner controverted, except for testimony that there were irregular route carriers.

which occasionally brought in a load of fencing, building material or similar freight, "and we never see them again". The witnesses so testifying with respect to Walcott are Lester Lund (R. 350-353), Erben and Reilly-Dietz (R. 1243-1245), and Clarence Lovewell (R. 1247-1249).

From Durant witnesses testified that many trucks pass through the community on U. S. Highway 6, "but they never stop". The witnesses from this town located twenty miles west of Davenport on U. S. Highway 6 were Grover Schneckloth (R. 329-335) and H. R. Lamp (R. 390).

Mrs. Dan Fesler, Coralville, dealer in food products, testified to delays of from two to five days in shipments handled by other carriers, which were delivered to her by transfer trucks from Iowa City. Direct deliveries were made to her place of business by Rock Island Motor Transit Company. Her experiences with the transportation service available to her community are set forth at R. 941-945.

Don Sheetz of Oxford, a dealer in animal feeds, drugs, medicine, extracts, spices and cosmetics produced by the Watkins Company of Winona, Minnesota, testified that difficulties had been encountered in securing delivery of truckloads from Winona, Minnesota; Applicant has the only interstate authority to serve Oxford and delays occurred when the Gateway Company endeavored to find a carrier which might make delivery of a truckload of his merchandise to him at Oxford. This witness's evidence appears in the Record at (R. 458-463).

Applicant has the only certificate authorizing transportation in interstate commerce to and from Kalona

and Wellman, which are located in eastern Iowa and are reached from Iowa City via Iowa Highways 1 and 22. Witnesses from Kalona were Arthur Beranek, dealer in farm implements and machinery, whose evidence appears at (R. 590-593); W. L. Gates, an implement and Chevrolet dealer, whose evidence appears at (R. 593-596); Ellis Swartzendruber, who is engaged in the sale of implements and farm supplies and whose testimony appears at (R. 596-598) and Paul Brenne-man, an automobile dealer, whose evidence is set forth at (R. 598-600).

All these witnesses testified that no other service was available to them at Kalona except that of applicant, and told of the needs of their various businesses for the continuation of such service.

At Lewis in the western part of Cass County (located south of Atlantic and adjacent to U. S. Highway 6), the evidence of the witness Reilly Clark sets forth in some detail the transportation picture affecting that community. It is located only one mile off U. S. Highway 6 and numerous carriers, other than Rock Island Motor Transit, pass the community, but render no service to it. The businessmen at this point presented a petition (reproduced R. 1904) which graphically outlines the necessity of applicant's service to the community. The evidence of the witness Clark appears at (R. 1210-1216) and establishes how dependent the citizens of that community are upon the continuation of the service rendered by applicant.

At Hancock, a small community located on U. S. Highway 59 and some eight miles north of U. S. Highway 6, a similar situation exists. William Ebert, owner of Ebert Oil Company, distributor of petroleum

products, tires batteries and automoblie accessories, testified that lubricating oils are received in less than car load shipments on practically a daily basis. He testified that there were truckers located at Hancock that haul livestock to Omaha, Nebraska. That Iowa-Nebraska Company apparently has no right to serve Hancock and that there is no regular service available except that of Rock Island Motor Transit Company (R. 600-602).

American Trucking Associations, Inc. and motor carrier appellants contend that the District Court erred in failing to set aside the Commission's order for lack of evidentiary support as to the "major points". See appellants' brief in No. 6, pages 51-54. These "major points" apparently include all cities and towns having a population in excess of about 6,000 except the City of Muscatine, population 19,041, located about 27 miles southwest of Davenport on the Mississippi River. This contention of appellants overlooks a large amount of extremely pertinent and persuasive evidence which counsel have entirely ignored in their presentation. The record shows that a total of 34 shippers and receivers of freight at these so-called "major points" took the witness stand and testified to the need for Rock Island Motor Transit service to and from their communities. In addition, evidence of representatives of Chambers of Commerce from Chicago, Davenport, Moline, Muscatine, Iowa City, Cedar Rapids, Des Moines, Atlantic and Omaha was presented in support of the need for applicant's service to the so-called "major points."

From the City of Chicago four shipper witnesses and the assistant traffic manager of the Chicago Association of Commerce supported the application. The

testimony of these witnesses may be briefly summarized as follows:

MacDonald, traffic manager for Butler Brothers, wholesalers of general merchandise sold in variety stores, testified that his company shipped approximately 15 million pounds of freight per year, serving about 150 stores or dealers in Iowa, about a dozen of which are located on or adjacent to U. S. Highway 6. An average shipment to such dealers would weigh approximately 300 pounds. Occasion to make shipments of more than 5000 pounds would normally occur only in the case of store openings. The witness was particularly interested in service from Chicago to Audubon, Brooklyn, Colfax, Exira, Grinnell, Muscatine, Newton, Shelby, Stuart and Victor. Other carriers had failed to respond to calls for pick up service for outbound shipments, while Rock Island Motor Transit had responded to all calls promptly in a three months period. The witness further testified that the service rendered by Rock Island Motor Transit Company had been uniformly satisfactory (See R. 268-277).

Lussa, Chicago traffic manager for Rexall Drug Company shippers of drug store merchandise and supplies, drugs and pharmaceuticals, testified that his company shipped its products to approximately eight points including Des Moines, Grinnell, Iowa City, and others. The witness further said: "A good portion of our business is done with accounts located in these smaller towns and involving these peddle runs and we have found that the service of Rock Island Motor Transit has been favorable and we are afraid that if their service is discontinued or curtailed in any way

it would jeopardize our position." All Rexall dealers in the Iowa territory are served from the Chicago branch of the drug company. (R. 277-281)

Ozinga, traffic manager for Consolidated Grocers Corporation, which ships weekly or bi-weekly to 23 Iowa points on or adjacent to U. S. Highway 6, including such points as Atlantic, Council Bluffs, Davenport, Des Moines, Grinnell, Iowa City and Newton. He testified that Rock Island Motor Transit has proved to be the most reliable carrier; that the company had had some bitter experiences in the past with service by others, and that routings had been set up to many of the small towns for use of Rock Island Motor Transit service exclusively. On many occasions the company has need for volume shipments of over 5000 pounds weight. Any restriction or limitation on Motor Transit's service would adversely affect the firm's business for it requires consistent service to every point to which it ships groceries because of local competition. (R. 283-284)

Hoppe, traffic manager for a Chicago wholesaler of school and office supplies, housewares, books, library supplies and sundries, testified that his firm did business with schools, libraries and similar institutions in practically every incorporated town or village on U. S. Highway 6 between Davenport and Omaha; its shipments averaged from 350 to 500 pounds to those points; it has been using Motor Transit's service exclusively for the past fifteen years and he knows of no other carrier which gives the same type of service (R. 281-289)

Maurer, assistant traffic director of Chicago Association of Commerce and Industry, consisting of 400

very large industries in the Chicago area, and some 2100 shippers who use the service of the association, testified that Motor Transit "is performing a necessary service and should be permitted to perform a full common carrier operation. That means to handle not only the smaller towns but the larger towns on their routes and to handle truckload as well as the less-than-truckload traffic. In other words, to have an operation which is economically sound." (R. 243-245; Ex. Rept., R. 22)

From the Quad City area comprising Davenport and Bettendorf, Iowa, and Rock Island, Moline and East Moline, Illinois, four shipper witnesses and two representatives of Chambers of Commerce testified to the need for the continuation of Motor Transit's service to the area. These witnesses were:

Stevens, traffic manager for John Deere Plow Company of Moline, extensive producers and shippers of farm implements and parts to dealers on or adjacent to U. S. Highway 6 and to practically every city and town including the larger points of Iowa City; Cedar Rapids, Grinnell, Newton and Des Moines. The witness testified that while overhead service was available from Moline to Des Moines, many carriers would not accept shipments to intermediate points, while Motor Transit performed service to all points. He expressed the view that the interests of the Moline manufacturer and its dealers require that Motor Transit have unrestricted authority. (R. 470, Ex. Rept., R. 38)

Gans, general traffic manager for John Deere Company, testified to the needs of his company for service over the White Line and Frederickson routes in

western Iowa including specifically Omaha, Nebraska, and Atlantic, Iowa. He testified that Motor Transit was the only carrier which had served his company's needs in both the smaller and larger communities on its routes, and that it must be permitted to serve the larger, or key points, such as Des Moines and Omaha to support its over-all service. (R. 260)

Schunter, salesman for a Moline wholesale plumbing and heating firm, making daily shipments of about 500 pounds each to fifteen dealers in Iowa on U. S. Highway 6 between Davenport and Iowa City, testified that his firm had received excellent service from Motor Transit, knows of no comparable service in the area and feels it should be continued. (R. 321-325, Ex. Rept., R. 38)

Pahl, general superintendent of Rock Island Bridge and Iron Works, Rock Island, Illinois, which ships steel to points in eastern Iowa including Iowa City, testified that his company had shipped steel products via Motor Transit in quantities ranging from 500 pounds to truck loads of 28,000 pounds, to various points in Iowa on U. S. Highway 6 including Iowa City. (R. 881) Its service on both big and little orders has been satisfactory. Many of the shipments have been of a character that Motor Transit was the only carrier that would handle them. (R. 882-884)

Woodard, traffic manager of the East Moline, Moline and Rock Island traffic bureau comprising 68 industry members located on the Illinois side of the Mississippi River. The type of service rendered by Motor Transit was performed by no other motor carrier operating over U. S. Highway 6 in Iowa, and the members of his bureau require continuation of this service. (R. 392-402, Ex. Rept., R. 24)

Cummins, long time traffic director for Davenport Chamber of Commerce, testified to the necessity for continuation of applicant's service for distribution of pool car traffic to various Iowa destinations and for continuation of interline service to eastern Iowa points through the Davenport gateway. (R. 227-240)

From Muscatine, Iowa, one skipper witness and the general secretary of the Muscatine Chamber of Commerce supported the application. The witnesses were:

Gould, representing two Muscatine companies, which manufacture and distribute livestock feed and soy bean products. (R. 1263-1267) His company receives once or twice a week motor carrier shipments of parts for machinery, and equipment from both eastern and western points including Omaha. (R. 1265) Motor Transit renders the only through service on Omaha shipments and if its service was terminated or curtailed it would adversely affect Muscatine and its business interests.

Sweeney, general secretary of Muscatine Chamber of Commerce with a membership of 300 including manufacturers, wholesalers and individual merchants, testified that Motor Transit was one of two motor carriers maintaining terminals at Muscatine; that Motor Transit renders the only regular service to Omaha and points west; that the service was required by a number of members of his organization. (R. 1251-1263, Ex. Rept., R. 23)

From Iowa City, Iowa, five shipper witnesses plus the secretary-manager of the Iowa City Chamber of Commerce, testified to the service rendered by applicant and the necessity for its continuation. These witnesses were:

Jacobs, secretary and purchasing agent for an Iowa City retail lumber, building and farm supply dealer which receives shipments from Chicago and other eastern points. While other carriers operate between Chicago and Iowa City he has found that the service of applicant is superior and considers same necessary to the community. (R. 488, Ex. Rept., R. 41)

Nesmith, manager of a plumbing and heating wholesale house at Iowa City, which deals in both truck-load and LTL shipments from eastern, central and southern states including Chicago, testified to the superior quality of applicant's service. That cessation or curtailment of such service would seriously affect his business and that his firm had been designated as a distributor of certain products because of the available transportation afforded by Motor Transit. (R. 486-490; Ex. Rept., R. 41)

Swanholm, local plant manager for Moore Business Forms Company, which manufactures forms for tabulating and accounting machines, and which has a volume of westbound shipments through the Omaha gateway, usually not exceeding one ton in weight. He has found service by other motor carriers to Omaha and beyond unsatisfactory. (R. 496) While that of Motor Transit has been very good. He has been routing shipments to Omaha and beyond via Motor Transit and desires to continue such practice. (R. 496)

Slager, proprietor of a hardware, appliance and farm implement store at Iowa City. Receives shipments in excess of 5000 pounds from ~~eastern~~, central and western states including Chicago and Wisconsin points. Motor Transit's service has been satisfactory while that of its competitors has been unsatisfactory.

both as to time of delivery and as to loss and damage claims. If Motor Transit's service were discontinued he would be required to seek other sources for his merchandise and to increase his inventory. (R. 1147)

Wegmuller, manager for a wholesaler of automotive parts and equipment and also operates a machine shop at Iowa City. His company receives shipments of batteries from Minneapolis, welding equipment and springs from Chicago and receives shipments from factories located in Detroit, New York, Pennsylvania, Kansas City, Springfield, Illinois, and the Pacific Coast. (R. 1137) He has found the service rendered by Motor Transit preferable to others on inbound shipments because of unreasonable delays and improper handling of claims, and curtailment of Motor Transit's service in the area would require him to provide his own delivery service by truck in the surrounding area.

Gage, secretary-manager of Iowa City Chamber of Commerce, testified to efforts to attract new industries to Iowa City at which the State University of Iowa and a large Veterans Administration Hospital are now located. Considers the trucking facilities available to Iowa City quite outstanding, based upon Motor Transit's interstate and intrastate service, and that local transportation is very important in attracting such industries. (R. 484-486)

From Cedar Rapids, Iowa, two witnesses testified to the need for continuation of applicant's service and removal of existing restrictions to points such as Tri Cities, Omaha and Chicago. These witnesses were:

Ewoldt, manager of traffic Bureau of the Cedar Rapids Chamber of Commerce, testified to the pres-

ence of numerous industries requiring service to and from the community (R. 1117-1118) and that a carrier performing local service like Motor Transit must necessarily have certain overhead or long haul revenues to make its operations economically sound. Cedar Rapids industries make shipments to and from points such as Omaha, Chicago and Kansas City which are served by Motor Transit. Motor carriers generally other than Motor Transit have tended to perform an overhead service between larger points where gross revenue is greatest and handling costs are less. (R. 1122-1123)

Johnson, general manager of Harper and McIntire Company, wholesalers of hardware and heavy goods lines, testified that his company required service for shipments in excess of 5000 pounds and that he had found applicant's service the only service available to intermediate points on U. S. Highway No. 6 in Iowa; that traffic to major points was necessary to support and keep this service available.

From Grinnell, Iowa, six witnesses testified to the necessity for continuation of applicant's service and removal of existing restrictions. These witnesses were:

Zimmerman, operator of a hardware, auto supply and appliance store, franchised by a nation-wide organization at Minneapolis, Minn., who receives 300 pound shipments almost daily from that point, and also receives merchandise direct from Chicago and Omaha. He has experienced excessive damage claims and slow service via other carriers. Operates on a small capital with low inventory, and must keep his stock moving. (R. 713-716)

Matthews, Rexall drug store proprietor, receives shipments from Chicago and other eastern points at least once or twice a week; Motor Transit's service has been about perfect, and continuation of it is necessary in his business. (R. 716-720)

Ritter, dealer in hardware, appliances, plumbing and heating equipment and supplies, receives out of state shipments from Chicago and Omaha. (R. 734) Has tried all motor carriers serving Grinnell, but has found motor Transit's service is superior and relies on Motor Transit's service for local delivery to the points served. (R. 735-738)

McKean, owner of a variety store, receives four or five shipments per week from Chicago. Has found service of Motor Transit dependable and has had unfavorable experience with other carriers especially on seasonal goods. (R. 747-751)

Brink, manager of a plant manufacturing shoes at Grinnell, employing about 125 persons. Receives shipments of raw materials from eastern and southern points which he has been routing via Motor Transit from Chicago. (R. 758) Outbound shipments generally go to dealers in the midwest area; pick up and delivery service of Motor Transit has been superior to other carriers, and delay or loss of inbound shipments would disrupt production at the plant. Considers continuation of Motor Transit's service necessary to his business. (R. 752-760, Ex. Rept., R. 49)

Phelps, general manager for Ahrens Manufacturing Company, fabricator of playground equipment, receives steel tubing from Chicago and eastern points and ships playground equipment to midwestern points through Omaha and Kansas City, and to eastern

points, such as Cleveland, through Chicago. Considers continuation of applicant's service essential, as well as removal of 5000 pounds maximum upon applicant's operating authority. (R. 721-723) Has experienced difficulties in obtaining delivery on inbound shipments from Chicago and eastern points, as well as unsatisfactory service on smaller shipments.

From Des Moines, Iowa, five shipper witnesses and the Traffic Manager of Des Moines Chamber of Commerce testified in support of the application. These witnesses were:

Triggs, manufacturer's agent for plumbing and heating equipment, including heavy boilers and allied lines moving from Chicago and Waukegan, Illinois, and Hartford, Conn. to destinations on White Line routes including Des Moines. This witness testified that his shipments in many instances weighed more than 5000 pounds; that they were consigned direct to contractors, or dealers, from out of state points and that he had found applicant's service superior to any other line prior to the imposition of the restrictions; that he had had unsatisfactory experiences with other carriers and wanted to be able to ship as he did before restrictions were imposed on applicant. (R. 1292) On cross examination the witness testified that he was interested in service from Chicago and Waukegan, Illinois, to Iowa City, Cedar Rapids, Grinnell, Newton and Des Moines and to some extent points west. The wholesale houses for which shipments are made are located at Moline, Davenport, Iowa City, Cedar Rapids and Des Moines.

Louberto, assistant traffic manager for Brown-Camp Company, wholesale hardware of Des Moines, testi-

fied that his company made interstate shipments from out of state points like Chicago, and in the east, direct to dealers at practically all points between East Moline, Illinois, and Omaha. Requires service on inbound merchandise in quantities of from 5 to 10,000 pounds and in some instances in truckloads. Has found applicant's service superior to other carriers. (R. 1299-1306)

Shartnack, traffic clerk for Des Moines Drug Company, engaged in the wholesale distribution of drugs, chemicals, turpentine, linseed oil and similar products. The company had previously used the service of the Rock Island Motor Transit Company and found it dependable and would use such service on shipments in excess of 5000 pounds from points outside the state if such service were available. (R. 1306-1310)

Brody, buyer for Brody Manufacturing Company, wholesalers and dealers in men's wear, hosiery, shirts and work clothing, testified that the service of Rock Island Motor Transit Company on inbound shipments had been very satisfactory, and on shipments to Omaha and Lincoln, Nebraska and would be used if available. (R. 1310-1312)

Griffith, traffic manager for wholesale hardware firm, which secures its principal supplies from Chicago and eastern points. Shipments are made in truckload quantities and also in small shipments. Service of the Rock Island Motor Transit Company has been entirely satisfactory. The witness was primarily interested in being able to use Rock Island Motor Transit Company on inbound shipments and felt that his company should patronize them "because we depend on their outbound service on our distribution in the

State." Company sells to retailers in Rock Island, Davenport, East Moline and it makes direct shipments from the factory to retailers located at these points. (R. 1313-1316)

Hansen, traffic manager of Des Moines Chamber of Commerce, testified that wholesalers in Des Moines do business in the state and in the states immediately surrounding Iowa while Des Moines manufacturers do considerable business throughout the country. While many carriers have interstate rights to serve intermediate points on U. S. Highway No. 6 in Iowa, ~~no carriers are rendering service on smaller shipments except Rock Island Motor.~~ The carriers generally are attempting to do away with peddler service and operate from one terminal point to another. Applicant's service has been satisfactory. (R. 1316-1320)

At Atlantic four shipper witnesses and the secretary of the local Chamber of Commerce appeared to support the application. Shipper witnesses were:

Robinson, operator of two retail stores at Atlantic, Iowa. He ships merchandise in from Omaha and Chicago. (R. 541-546)

Turner, employee of a Chevrolet dealer, receiving shipments of automobile parts and supplies from interstate points including both Chicago and Omaha. (R. 933-941)

Meredith, farm equipment dealer who requires service on shipments weighing as much as 6000 pounds from out of state points including both Chicago and Omaha. (R. 531-540)

Mitchell, proprietor of a wholesale grocery concern, requires service from Chicago and out of state points. (R. 546-551)

From the Omaha-Council Bluffs area three shipper witnesses and a chamber of commerce representative appeared. The Council Bluffs' witness was:

Ball, proprietor of Western Mills Supply, manufacturer of hammers for hammer mills, who testified that his company requires service to Davenport, Iowa, and Illinois points from Omaha and Council Bluffs. Has found applicant's service superior to any other available in the territory. (R. 1005)

From Omaha, Nebraska, the following witnesses appeared:

Seastedt, manager of Omaha branch of Grant Storage Battery Company, manufacturers and distributors of storage batteries. Applicant's service only available service to many points on U. S. Highway 6 from Omaha. Business requires service on shipments in excess of 5000 pounds from Chicago. Service of applicant has been very good. At many points if Rock Island is unable to handle shipments there will be no carrier available to serve many towns. Had previously used service of Rock Island Motor Transit Company on truckload lots and would use such service, if available. (R. 1010-1013)

Hartnett, traffic manager for Paxton and Gallagher Company, at Omaha, which is engaged in the roasting and distribution of coffee, and a separate wholesale hardware division distributing hardware lines in Iowa, Nebraska and southern Minnesota. Company had used service of Rock Island Motor Transit consistently since establishment of the service. Have found the service uniformly good throughout the years including volume shipments of coffee including 50 truckload shipments from January 1 to August 1,

1951, which moved from Omaha to points in Iowa on the Motor Transit line including Des Moines, Davenport, Muscatine, Cedar Rapids and Ottumwa, Iowa, and Rock Island, Illinois. Rock Island Motor Transit performs the only single line direct service from Omaha to Brighton, Buffalo, Columbus Junction, Durant, Hancock, Kalona, Princeton, Washington, Wellman, and Muscatine. Brady Motorfrate has authority to serve some of the towns mentioned but has embargoed less than truckload quantities. The trend has been on the part of most over the road motor carriers to go to overhead freight rather than peddle local freight. Such situation exists at Brooklyn and other Iowa points. Motor Transit has maintained a terminal agent with available information as to service, rates, facilities for tracing shipments and filing of claims. The company maintains storage or warehouse facilities for reshipment to smaller communities at Des Moines, Cedar Rapids, Waterloo and Davenport and requires service from Omaha to each of such destinations. It is necessary for a carrier to have volume and overhead business as well as purely local shipments to support the peddler service to intermediate points. (R. 994-1004)

This mass of evidence we submit amply supports the conclusion of the Commission that there was, and for the future will be, a need for continuation of the service performed by the applicant, not only to the smaller intermediate communities with populations of from a few hundred up to 6000 persons, but between the so-called major points as well.

Briefly stated, it is the contention of appellants in No. 6 that while they are unwilling to perform transportation service to the smaller intermediate com-

munities of a few hundred population, Motor Transit should be required, because it is a railroad subsidiary, to render service at such points for their convenience, and for the convenience of the communities, and that it should not be permitted to participate in the transportation of volume shipments, or the handling of truckload quantities, which are economically essential to sustain service to the small communities. It is the contention of appellants, some of which handle a gross business many times exceeding that of applicant, that they should be permitted to skim the cream of the profitable traffic, and applicant, because it is controlled by a railroad, should not be permitted to serve the so-called major points.

The Commission disposed of appellants' contentions on this phase of the case in its opinion by saying:

"This truckload 'cream of the traffic,' which to some extent has been handled by Motor Transit for many years without seriously affecting the expansion of its competitors' operations, should not be handed over to its competitors and Motor Transit expected to provide the expensive peddle services.

"Acceptance of the opposing motor carriers' position would have the following results. They would be left to provide the peddle services on interstate motor-billed traffic, which alone will not justify the type of service heretofore rendered by Motor Transit, and all such traffic in truckloads. Motor Transit would be left with intrastate and rail-billed traffic, which will not warrant continuance (fol. 79) of the operations conducted by it prior to August 30, 1951. The net result is clearly not in the public interest." (R. 115)

The trial court in its opinion said with reference to this phase of the case:

“Actually the result of sustaining the motor carriers’ position would be a privilege to them of giving the service now rendered by Motor Transit if they so desire, and refusing to give it when it is economically not feasible. That would not appear to serve the public interest.”

It must be borne in mind that the *only question* now before the Court is whether this Record contains substantial evidence which supports the Commission’s finding that public convenience and necessity requires applicant’s service to and from the major points, as well as to the small intermediate communities. We have never heard of a case in which service has been required from larger centers of population to small intermediate points, without permitting the carrier to render service between the terminal points as well. A restricted operation as proposed by appellants is certainly economically unsound, and justified by neither reason nor common sense.

This Court has frequently pointed out that the Commission and not the Court is the final authority on what is required in the public interest. We believe that the extent of the authority to be given to applicant was clearly a matter within the discretion of the Commission and that the Court may not, consistent with the spirit and purpose of the Transportation Act of 1940, substitute its judgment for that of the Commission as to the points and places to and from which applicant shall be authorized to render service.

The contention of appellants that the operations of Rock Island Motor Transit have restrained competition with independent motor carriers, and that there is danger that Motor Transit and its rail parent may acquire a monopoly in the transportation field is wholly unsupported by the evidence.

Throughout the brief of appellants in Cause No. 6, it is urged that the National Transportation Policy requires that railroads and their affiliates shall be excluded from the field of motor carrier transportation; that any other rule will inevitably result in the creation of a gigantic railroad monopoly, and that the independent motor carriers cannot successfully compete with so-called subsidized operations of motor carriers, affiliated with, or controlled by railroads. In view of the developments in the transportation field in the post-war era, this contention is little short of an absurdity. In the infant days of the motor carrier industry, the fear was often expressed that railroad corporations might secure a monopoly of highway transportation, through purchases of competing motor carriers. To insure that this would not occur, Congress adopted as a part of the original Motor Carrier Act, 1935, Section 213, later carried forward as Section 5(2)(b) of the Transportation Act of 1940.

The record in the case at bar, if it establishes any fact, shows beyond a shadow of doubt that in the mid-west area there is no danger that railroads, or their subsidiaries, can ever secure a monopoly of highway transportation. Much has been said and written on this subject without the benefit of cold hard facts. We believe that in this record, for the first time, we have presented to the Commission, and to the Courts, some of the economic facts of life as they exist in the transportation industry in the midwest today. Thus,

it appears without dispute that in 1946, the first post-war year, class I railroads of the United States handled 24,300,000 tons of less carload freight. In 1950 the railroads' portion of such traffic had dropped to 10,900,000 tons, a decline of 60% in only four years' time. (See Graph, Exhibit No. 23, opp. R. 1908.) In the same period class I motor carrier tonnage had increased more than 100%. Truck tonnage of class I motor carriers, with 12 per cent of the carriers not reporting, in the year 1946 was slightly in excess of 100,000,000 tons and in 1950 had increased to more than 210,000,000 tons. (See Exhibit 22, reproduced opp. R. 1906). Statistics for the years intervening between the year 1950 and the present day indicate startling continuations in the decline in rail tonnage, and correspondingly large increases in truck tonnage. So we say that as applied to the nation as a whole, there is no evidence in this record that the entry of railroads into the trucking field has interfered in any degree with the mushroom-like growth of independent motor carriers.

When we examine the statistics more directly applicable to the midwestern area involved in this proceeding, we find even more startling results. Thus it appears that in 1944 applicant, Rock Island Motor Transit Company, transported in intercity service 112,000 tons of freight of all types. This volume declined in 1945 to 97,697 tons, then gradually increased to a total of 159,348 tons in 1950. The consolidated L.C.L. traffic of the Rock Island Railroad and motor billed freight of Rock Island Motor Transit Company reached a high point of 748,260 tons in 1946 and declined to 423,960 tons in 1950. During the period between 1944 and 1950 the tonnage transported

in intercity service by nine selected midwest carriers competing with Motor Transit increased from 755,683 tons to 1,852,540 tons (see Graph, Exhibit 8, opp. R. 1850). The record also demonstrates that the average load in tons handled per truck, and the average length of haul, in the case of competitors, had sharply increased, while Motor Transit had shown declines in both respects.

Furthermore a study of the tonnage handled by certain of the appellants in Cause No. 6 discloses that they had fared much better than the average motor carrier, despite the presence of competition afforded by applicant. Thus, Des Moines Transportation Company, which operates between Chicago, Des Moines and Omaha, and Des Moines and Minneapolis, handled 49,871 tons in 1944 and 178,540 tons in 1950 (see Exhibit 57 reproduced R. 2074). Iowa and Nebraska Transportation Company's tonnage was 15,421 tons in 1944 and 43,678 tons in 1950.

The record contains one very significant bit of evidence with respect to the extent to which independent motor carriers have been able to capture the traffic formerly transported by railroads. In the period January 29 to February 3, 1951, inclusive, the principal motor carriers operating in the City of Des Moines, Ia., made a terminal cost survey under the supervision of Mr. L. L. Cole, auditor for Rock Island Motor Transit Company. Rock Island Motor Transit at that time performed all pickup and delivery service for the Rock Island Railroad in the City of Des Moines, as well as for its own motor billed freight. During this six-day period, Rock Island Motor performed pickup and delivery service in the Des Moines area for less than truckload shipments on 1,769,751 pounds

of freight. In the same period, Des Moines Transportation Company performed similar service on 1,922,870 pounds. Bruce Motor Freight performed such service on 1,154,479 pounds and Burlington Transportation Company on only 631,260 pounds. During the same period (before the imposition of the restrictions upon Rock Island) Motor Transit performed pickup and delivery service on truckloads of 221,669 pounds, while Des Moines Transportation rendered similar service on 1,758,134 pounds, and other carriers handled smaller amounts. (See Exhibit 12, reproduced R. 1859 and testimony of L. L. Cole R. 442-451).

~~This study demonstrates that in the City of Des Moines, Iowa, the principal place of business of Rock Island Motor Transit Company and its operating headquarters, one competing motor carrier was handling more less-carload business than the Rock Island Railroad and Motor Transit combined. As applied to truckload traffic, this one carrier was transporting eight times the volume handled by Rock Island Motor Transit Company. It shows also that the total volume of business handled by only three so-called independent motor carriers, including Des Moines Transportation Company, Watson Brothers, and Bruce Motor Freight, was approximately three times the combined volume handled by the Rock Island Railroad and its subsidiary.~~

It must be borne in mind that the study was made during the period in which the Rock Island Motor Transit Company was operating without restriction, with no keypoint and no maximum weight limitations. In the face of this factual showing, how can the appellant motor carriers contend that there is danger of monopoly if Rock Island Motor Transit is given the right to compete with them on equal terms?

The record in this case affirmatively discloses that applicant Motor Transit, while 100 per cent owned by the Rock Island Railroad, has at all times cooperated with other motor carriers, and that it has been guilty of no destructive practices affecting the industry. No evidence was introduced to show that Motor Transit's practices and methods of operation were in any manner unfair or prejudicial to the rights of its competitors. On the other hand, the record shows without question that Walter Hitchen, applicant's General Freight Agent, has devoted much time to the interests of the motor industry (R. 1402). He served as President of the Midwest Freight Bureau at Kansas City, Missouri, and was in full charge of its operations for several months. Mr. Peterson, applicant's General Manager, testified (R. 1403):

"The policy of the Rock Island Motor Transit Company [fol. 1877] has been to maintain and create a healthy truck industry. We have cooperated with them in every way. We have cooperated with them in rates. We have cooperated with them in labor contracts. We have taken every strike right down the line. I have just finished one of three weeks in Kansas with the truck operators. Our policy has been to cooperate in every way we could cooperate with the truck industry."

Counsel for appellants urge that because Motor Transit is owned by a railroad it possesses four distinct competitive advantages to which no independent motor carrier can successfully aspire. The first is that the Iowa State Commerce Commission follows a policy of granting no overlapping certificates between identical terminal points over the same routes. They criticize the policy of the Iowa Commission as im-

proper and unsound; yet at other points in their brief they say that one of the objectives of the Federal Motor Carrier Act (1935) was to prevent wasteful and destructive competition in the motor carrier industry. Iowa's policy with respect to the regulation of motor carriers is consistent with that followed by many of the states. It is not a matter over which the Interstate Commerce Commission may exercise any control, and the question is one wholly within the sphere of state action. Any competitor of Motor Transit who secures an intrastate certificate will have the same advantages created by this state policy.

Second, it is said Motor Transit receives rail-billed traffic from its railroad parent which swells its volume, fills empty space in its trucks, and thus increases its revenues. This is exactly what the Commission authorized Motor Transit to do when it made the finding in the original *White Line Acquisition Case*, MC-F-445, that the Rock Island Railroad could use motor service to public advantage in its operations. This it cannot do when burdened with "key point" restrictions between larger centers of population.

Third, it is charged that at many points where no Motor Transit representative is stationed, railroad agents act for it. This is contrary to the record and is supported only by an inadvertent statement by one witness at Ladora, Iowa, (R. 455-456) who apparently was referring to rail-billed traffic. The Commission made no finding that the railroad depot agent assumes to act for Motor Transit with respect to shipments moving on motor carrier billing. The record is just the reverse.

Fourth, it is said, at pages 57-58 of appellant's brief, that although independent motor carriers "must con-

duct their financial affairs within the rigid confines of economic reality, Motor Transit is able, through heavy subsidization by the railroad, to finance its equipment purchases on favorable terms". This is an appeal to emotion not based on logic or common sense. It has always been true that individuals possessed of substantial means may borrow money more readily than those without such means. Furthermore, the record contains no evidence whatever that the so-called independent motor carriers have been unable to finance their equipment acquisitions on reasonable terms, or that they have been placed at any disadvantage in that respect by reason of the operations of Motor Transit.

It is urged also that independent motor carriers are in danger of extinction because of the predatory character of Motor Transit's parent corporation. The short answer to this is that in the years between 1938 and 1951, during which Motor Transit operated without restrictions, the independent motor carriers in the midwestern area, as shown by the record, achieved an unprecedented growth, and that both in the particular area involved, and the nation as a whole, motor carriers made tremendous inroads upon the traffic formerly handled by rail carriers. We think this Court may take judicial notice of the fact that in the years which have elapsed since 1952, these trends have continued at an accelerated rate.

CONCLUSION

All parties to this litigation concede that applicant, between April, 1938 and August 30, 1951, rendered an efficient dependable motor carrier service to the communities large and small, located on or adjacent to U. S. Highway 6, and to certain off route points, be-

tween East Moline, Ill. and Omaha, Neb. It is likewise conceded that applicant's service has enabled its rail parent to perform a more frequent, more efficient service than would have been economically feasible in this rather sparsely populated area by the use of train service alone. No one denies that this service has been made possible only because applicant possesses both interstate and intrastate certificates, and receives additional revenues from rail billed freight. No one can read this record and conclude that the operations of appellant have monopolized transportation or stifled competition from other motor carriers.

We believe that the Commission's full and complete review of the facts caused it to reach the only sound conclusion which an informed judgment could properly reach, that continuation of applicant's service was clearly in the public interest; and that public convenience and necessity require it. The conclusion of the Commission was within the sound discretion which the Congress delegated to it. We submit that the judgment of the District Court is correct and that it should be, in all respects affirmed.

Respectfully submitted,

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